XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

मामला क्रमांक CRA No 564 सन् 200 I

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (In Jail)	Manrakhan, S/o Ramcharan, aged about 35 years, Caste Harijan, Occupation labour, resident of Sarona, P.S. Narharpur, District Kanker (Chhattisgarh).
		- Versus -
	RESPONDENT:	State of Chhattisgarh, through the District Magistrate, Kanker, District Kanker.
	(Criminal appeal under Section 374 (2) of the Cr.P.C.)	
	Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.	
	27-6-2007:-	
	Shri Pawan Shrivastava, counsel for the appellant.	
	Shri Akhil Mishra, Panel Lawyer for the State/respondent.	
	Oral judgment dictated on *Dais*.	
	L.C. Bhadoo, J.	
	This appeal is directed against the judgment of conviction and order of sentence dated 10th May 2001 passed by the 2nd Additional Sessions Judge, Kanker, in S.T. No.203/2000 whereby learned	

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आदेश पत्रक (पूर्वानुबद्ध)

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Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing the murder of his wife namely, Somwati, sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 21-3-2000 father of the accused along with the accused gave merg intimation Ex.-P/7 and same was sent to the Police Station Narharpur for registration of the case. After registering FIR Ex.-P/1, Station House Officer C.S. Sharma left for place of occurrence and prepared inquest Ex.-P/4-A on the body of Somwati which was lying in the Parchi of the house. Plain soil and blood stained soil were taken into possession. Similarly, broken pieces of glass bangles and Mangalsutra were also taken into possession. The body of the deceased was sent for postmortem examination to the Government Hospital, Kanker, where Dr. J.S. Sahu (PW-4) conducted postmortem, prepared postmortem report Ex.-P/5-A and opined that cause of death was fracture of cervical vertebra i.e. injuries to the spinal cord leading to respiratory paralysis and death.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Kanker, who in turn

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आदेश पत्रक (पूर्वानुबद्ध)

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committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused examined 9 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed homicidal death of the deceased and involvement of the accused in commission of the crime. Moreover, from the evidence of PW-1 Ishwar Das and PW-2 Ramcharan, father of the accused, it is established that the accused made extra judicial confession before them that he has committed murder of his wife by attacking her. Medical evidence of Dr. J.S. Sahu (PW-4) also shows that there were some abrasions & contusions on the body of the deceased. 10 injuries

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आदेश पत्रक (पूर्वानुबद्ध)

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were found on the body of the deceased. Some other injuries were also there. The deceased died on account of fracture of cervical vertebra and injury to spinal cord. On account of that respiratory system was affected. In view of the above, we do not find any illegality or infirmity in the finding of the trial Court regarding involvement of the accused in the crime in question.

Learned counsel for the accused/appellant argued that as per the admitted facts of the prosecution case, the accused came in drunken condition and demanded food from his wife. When she did not provide food, he attacked with slaps and club, as a result of which the deceased sustained injury on the neck and her bone was fractured which proved fatal and the deceased died. Therefore, there was no intention of the accused to cause death of his wife. He further argued that, therefore, offence against the accused does not travel beyond Section 304 Part III of the I.P.C.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

As per the prosecution case, the accused attacked his wife when she did not provide food. He attacked with slaps & club and that club landed on the back side of the neck of the deceased which

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आदेश पत्रक (पूर्वानुबद्ध)

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proved fatal. The bone of neck was fractured, on account of failure of respiratory system the deceased died as per medical evidence. In view of the above fact, the prosecution has not been able to establish that the accused attacked his wife with intention to cause death. However, the manner in which the accused attacked, it can safely be inferred that the accused had knowledge that by attacking the deceased with slaps and club, he may likely to cause death. Therefore, offence against the accused is made out under Section 304 Part-II of the I.P.C.

In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused under Section 302 of the I.P.C. are set aside, instead thereof he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 7 years. Learned counsel for the appellant submitted that the appellant is in detention since 22-3-2000, which has not been disputed by learned counsel for the State/respondent, thereby the accused/appellant has already undergone sentence imposed upon him. In the circumstances, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve